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February 27, 2006

**Request for Review of a decision made by USAC – CC Docket Nos. 96-45 and 02-6**

**Decision being appealed:** Administrator's Decision Letter dated December 30, 2005  
(Attachment 1)

**Form 471 Number:** 467362

**FRN:** 1292099

**Funding Year:** 2005 (7/1/2005 – 6/30/2006)

**Billed Entity Number:** 143257

**SPIN:** 143005607

**Service Provider Name:** International Business Machines Corporation (IBM)

**Applicant:** Gallup-McKinley County School District  
700 S Boardman Ave  
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**Applicant's Contact Person:** George McDonald  
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I am writing to request review by the FCC's Wireline Competition Bureau of a decision by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) to uphold, on appeal, SLD's decision, announced in a Funding Commitment Decision Letter (FCDL) dated October 5, 2005, to deny the FRN cited above because "the service/product requested is not being used in accordance with program rules."

This FRN was a request for discounts on basic maintenance of equipment eligible for E-rate funds. Some history here may be helpful.

In Funding Year 2004, we requested discounts for basic maintenance to be provided by IBM. In that year, our request was influenced by guidance in the Third Report and Order that: "On-site technical support is not necessary to the operation of the internal connection network when off-site technical support can provide basic maintenance on an as-needed basis."<sup>1</sup> We took that to mean that requests for discounts for on-site maintenance would be denied. Therefore, IBM proposed to base its workforce that would respond to our maintenance needs in Albuquerque – a two-hour drive from Gallup. That request was denied by SLD because the 4-hour drive time for a 2-hour service call was deemed not cost-effective – a basic FCC requirement for *bona fide* funding requests.

During subsequent conversations with George McDonald, then-USAC Vice President for the SLD, we were told that on-site maintenance was eligible for discounts if it were more cost-effective than off-site. Therefore, for Funding Year 2005, we requested discounts for IBM to provide basic maintenance with its technical staff based in Gallup and operating from offices in facilities of Gallup-McKinley County Public Schools. You can imagine our surprise when that request was denied and the denial upheld on appeal on the basis that off-site maintenance could be provided on an as-needed basis – with no mention of cost-effectiveness.

Over the two year period, therefore, SLD has denied both on-site and off-site maintenance. Our question is: What option is left? Could it be that remote school districts just may not qualify for basic maintenance? We cannot understand SLD's two conflicting positions.

We asked for a meeting with SLD staff to understand their perspective. They listened to our description of the events and said they would get back to us with their reaction. On February 8, 2006, we received an e-mail response from Ms. Catriona Ayer. She wrote:

For FY 2004, the decision to deny was based on our conclusion that the configuration presented in the application for off-site maintenance was not cost effective. However, we do not believe that should be taken to mean that all off-site maintenance configurations will be determined to be not cost-effective. Therefore, we cannot support the decision to grant funding for on-site maintenance. As you look at the FY 2006 application, we would encourage you to seek cost-effective off-site maintenance solutions.

As you state below, the FY 2005 decision has already been denied by the USAC appeals team. At this point, if you disagree with the outcome, you should take your appeal to the FCC.

We are following her advice to bring the issue to you.

First, SLD seems to base their denial on their "faith" that there must be a more cost-effective off-site alternative, although they have provided no evidence to support that

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<sup>1</sup> Third Report and Order and Second Further Notice of Proposed Rulemaking, FCC 03-323, Released December 23, 2003, para. 23.

claim or guidance about what they will fund. We believe that guidance that the Telecommunications Access Policy Division of the FCC's Wireline Competition Bureau provided in its decision on an appeal from the Fayette County School District (DA 05-2176, released July 27, 2005) is relevant here:

To the extent that Fayette's response was not sufficient to demonstrate eligibility, SLD failed to specify what additional information was required. We therefore remand this Request for Review to SLD and direct SLD to process the application consistent with this Order. We instruct SLD to provide Fayette with a detailed inquiry of the documents and information necessary for SLD to determine the eligibility of Fayette's request for funding.

We believe that, in Fayette County, the Commission directed SLD to attempt to obtain the information it requires to make a decision. SLD ought not to deny requests based on a belief that there may be more cost-effective options – it should request the information it needs to determine whether there, in fact, is a more cost-effective alternative.

We believe strongly that we did propose the most cost-effective alternative. Our FY 2005 proposal significantly reduced the extensive drive time for IBM technicians, thereby lowering costs. Since IBM does not have existing staff in Gallup, part of the cost of their providing service to us would be hotel costs for their staff, but that would be much cheaper than paying for the drive time. The technicians would also need office space to receive calls, store equipment, coordinate and plan, prepare reports, etc. If IBM had had to rent office space in Gallup, it would have passed those costs to us and to the USF in the form of a higher prediscout cost for the maintenance. In our experience, there are no qualified service providers who have a presence in Gallup; therefore, this same situation would apply to other service providers as well. We have unused space available for use by IBM technicians so IBM, Gallup-McKinley Schools and the USF were spared the extra expense of renting office space.

We do not believe there is a more cost-effective solution – providing service from remote off-site locations requires expensive drive time in excess of the time technicians spend providing service, and off-site locations in Gallup mean office rental, which is not required by placing the technicians at Gallup-McKinley County Schools' facilities.

We ask the Bureau to overturn the SLD decision and remand the FRN to them for funding.

Sincerely,



John Samford

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of Business Services

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